

SPECIAL TRIBUNAL OF SOUTH AFRICA
Judgment summary

| <i>Special Investigating Unit and Another v R I Mako Trading and Projects and Another</i> | |
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| URL | https://lawlibrary.org.za/akn/za/judgment/zast/2022/44/eng@2022-10-20 |
| Citations | (NW02/2020) [2022] ZAST 44 |
| Date of judgment | 20 October 2022 |
| Keyword(s): ¹ | Notice of motion, application, order, Tribunal, invalid, irregular, inflated, claim, unduly enriched, declaratory order, prescription, heads of argument, case management meeting, appear, hearing, opposed, relief, point <i>in limine</i> , service, transportation, learners, rural, tender, fraud |
| Case type ² | Application |
| Result | Upheld with costs |
| Flynote ³ | Law of Contracts – fraudulent conduct – the Special Tribunal is permitted to award monetary relief for the commission of fraudulent conduct |
| Legislation and International Instruments ⁴ | <ul style="list-style-type: none"> ● Sections 11(d), and 12(3) of the Prescription Act ● Sections 20(9)(a) and (b) of the Companies Act |
| Cases cited as authority ⁵ | <ul style="list-style-type: none"> ● S v Msibi 1974 (4) 821 (T) ● S v Munn 1973 (3) SA 734 (NC) ● Cape Pacific Ltd v Lubner Controlling Investments (Pty) Ltd and Others 1995 (4) SA 790 (A) ● Department of Agriculture, Forestry and Fisheries and Another v B Xulu and Partners Incorporated and Others [2022] 1 All SA 434 (WCC) |
| Facts ⁶ | In terms of a tender, the first respondent, RI Mako Trading (RMT) was awarded a contract (Transport Contract) by the Department of Public Works Roads and Transport (Department) to provide learner transportation services (the Services). When the Transport Contract expired, RMT continued providing the |

¹ Clarify the type of issues that come up in the case.

² Whether Trial, Application or Appeal.

³ **Area of law** - topic – subtopic.

⁴ Legislation/ International instrument title and section numbers.

⁵ List of cases considered to be important precedent (case name and citation).

⁶ Brief facts about the case (max 150 words).

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| | <p>Services on a month-to-month basis. The second respondent, Mako Remosetha Isaac (Isaac), was the sole director of RMT and oversaw the daily operations, including the submission of claims to the Department for the Services rendered in terms of the Transport Contract. The applicants alleged that the respondents had submitted excessive claims, resulting in fraud. The respondents did not dispute that the kilometres were overstated, but contended that all kilometres it had claimed were verified and approved by the Department. The applicants sought an order requiring the respondents to reimburse the second applicant for all the monies they had unduly enriched themselves through the submission of inflated kilometres.</p> |
| Summary ⁷ | <p>The respondents raised four preliminary points, namely: prescription, inappropriate application procedure, an improperly commissioned affidavit, and misjoinder of Isaac.</p> <p>The Tribunal was asked to consider the preliminary points, and to also determine whether the respondents had submitted excessive claims in terms of the Transport Contract and whether the applicants had made out a proper case for the monetary relief claimed.</p> |
| Decision/ Judgment ⁸ | <p>The application was successful and the respondents were ordered to pay the costs of the application. The Tribunal held that the claim had not prescribed, that RMT was not deemed to be a juristic person in respect of the liability or obligation to the applicants, and that the respondents were jointly and severally liable to make payment to the second applicant for the excessive claims.</p> |
| Basis of the decision ⁹ | <p>In terms of the prescription claim, the Tribunal found that the respondent had failed to present a version regarding when prescription had commenced. The applicants had, in turn, stated that the investigations had commenced in early 2018, and proceedings commenced in early 2020. The Tribunal was therefore satisfied that the application fell within the three-year period as contemplated in section 11(d) read with section 12(3) of the Prescription Act, and this preliminary point failed.</p> <p>The respondents had contended that the application procedure was inappropriate due to refutable inaccurate facts; however, the</p> |

⁷ Summary of the determination of legal questions and/or grounds of appeal (between 150-250 words).

⁸ A brief summary of the ruling/judgment of the court (max 100 words).

⁹ A 1-2 sentence summary of the basis of the decision (i.e. which legal rules were relied on).

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| | <p>Tribunal found no dispute of facts in the papers and therefore this preliminary point failed, too.</p> <p>The respondents also contended that the founding affidavit was not properly commissioned. The Tribunal found that the omissions were not substantial and that the purpose of the administering of the oath had been properly met. Furthermore, the respondents failed to demonstrate what prejudice they would suffer as a result thereof. Therefore, the Tribunal dismissed this preliminary point raised by the respondents.</p> <p>Finally, the respondents resisted relief being granted against Isaac. The Tribunal was however satisfied that, in terms of section 20(9) (a) and (b) of the Companies Act, Isaac had been the person controlling RMT and had failed in upholding his fiduciary duty to ensure that RMT complied with the law. The Tribunal, therefore, dismissed this preliminary point.</p> <p>On the merits, the Tribunal held that the respondents had failed to submit evidence to prove that the excessive kilometres claimed had been verified and approved by the Department. Furthermore, the Tribunal held that it would have, in any event, been unlawful for the Department to provide such approval as RMT was not entitled to such claims. The Tribunal was therefore satisfied that the excessive claims were clearly fraudulent and that the applicants had made out a proper case for the monetary relief sought.</p> |
| <p>Reported by Date</p> | <p>African Legal Information Institute (AfricanLII) 20 October 2022</p> |